

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KIM YOCHAI,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC,

Defendant.

NOTICE OF REMOVAL

Civil Action #:

**TO: United States District Court
Eastern District of New York**

Pursuant to 28 U.S.C. §1441 and 1332, the action entitled *Kim Yochai v. Lowe's Home Centers, LLC*, commenced in the Supreme Court of the State of New York for the County of Queens, Index Number 724775/2020, is hereby removed by Defendant, Lowe's Home Centers, LLC ("Lowe's" or "Defendant"), from the Supreme Court of the State of New York, County of Queens to the United States District Court for the Eastern District of New York by the filing of this Notice of Removal with the Clerk of the United States District Court for the Eastern District of New York.

Defendant, by and through its attorneys, Goldberg Segalla LLP, respectfully states the following as grounds for removing this action:

Procedural History

1. On or about December 21, 2020, the above-captioned civil action was commenced in the Supreme Court of the State of New York, County of Queens. Plaintiff's Summons and Complaint were assigned Index Number 724775/2020 (the "State Court Action").

2. According to the Affidavit of Service filed on January 11, 2021, the Complaint was served on Lowe's via the New York Secretary of State on December 30, 2020.

3. Copies of all process, pleadings, and orders served upon the parties in the State Court Action are attached as **Exhibit A**.

4. The State Court Action seeks monetary damages for personal injuries allegedly sustained by plaintiff, Kim Yochai, while shopping in the Lowe's Home Improvement retail store located at 253-01 Rockaway Boulevard, Rosedale, New York 11422.

Parties

5. Plaintiff is a resident of Queens County, State of New York.

6. Plaintiff is domiciled in New York State and is therefore a citizen of New York for diversity purposes.

7. Defendant is incorporated under the laws of the state of North Carolina and has a principal place of business in North Carolina.

8. More specifically, Lowe's Home Centers, LLC, is a limited liability company organized under the laws of North Carolina and with a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117.

9. The sole member of Lowe's Home Centers, LLC is Lowe's Companies, Inc.

10. Lowe's Companies, Inc. was incorporated under the laws of North Carolina and has a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117.

11. Accordingly, full diversity exists between the parties.

Jurisdiction

12. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Basis for Removal

13. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1441(a) because this is the

federal district court for the district embracing the place where the State Court Action is pending.

14. Though the Complaint does not state the amount of damages that will be sought, in response to Lowe's CPLR 3017(c) Demand, plaintiff claimed damages in the amount of \$5 million. Therefore, it is Lowe's good faith belief that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. Plaintiff's response to Lowe's CPLR 3017(c) demand dated July 9, 2021 is attached as **Exhibit B**.

15. Lowe's has timely brought this Notice of Removal within 30 days of its receipt of plaintiff's CPLR 3017(c) Response. *See* 28 U.S.C. § 1446(b). Prior to plaintiff's CPLR 3017(c) Response, Lowe' had no pleading, amended pleading, motion, order, or other paper from which it could ascertain that the case was removable.

16. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on plaintiff, by and through his attorneys of record, and is being filed with the Clerk of the Court of the State of New York, Supreme Court, County of Queens.

17. No previous application has been made for the relief requested herein.

WHEREFORE, Lowe's files this Notice of Removal so that the State Court Action bearing Index No. 152171/2020 now pending in the State of New York, Supreme Court, County of Queens be removed to this court for all further proceedings.

Dated: Buffalo, New York
August 2, 2021

GOLDBERG SEGALLA LLP

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